UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/49/394
19 September 1994
ENGLISH
ORIGINAL: ARABIC

Forty-ninth session
Item 103 (c) of the provisional
agenda*

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND
REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 14 September 1994 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you the reply of the Government of Iraq to the report entitled "Situation of human rights in Iraq", submitted by the Special Rapporteur van der Stoel to the Commission on Human Rights at its fiftieth session.

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly at its forty-ninth session under item 103 (c) of the provisional agenda.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

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ANNEX

Reply of the Government of Iraq to the report on the situation of human rights in Iraq submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights

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I.A. Introduction

1. First of all, the Iraqi Government would like to stress its concern for human rights and the importance of promoting and developing them, despite the circumstances following the period of the war with Iran and the military aggression of the Coalition forces against Iraq. This position should be considered an established policy of the Iraqi Government, inspired by the Islamic and national values and principles in which it believes. The Iraqi Government is also anxious to cooperate with United Nations agencies concerned with human rights, in order to ensure the protection of human rights in the spirit of the principles of justice, objectivity and non-discrimination.

2. A Special Rapporteur for Iraq was appointed in the complex and difficult aftermath of the Coalition's aggression against Iraq and the complete economic embargo imposed upon it. These critical factors continue to constitute an enormous threat to the Iraqi people and its Government. The Special Rapporteur should have taken those factors into consideration and worked towards establishing a constructive dialogue with the Iraqi Government which would get to the root of the charges levelled against it. He should have helped the Government to overcome its problems and difficulties, rather than premeditatedly working to do everything in his power to harm the Government of Iraq and its people. He has appointed himself witness, prosecutor and judge all at the same time, relying upon dubious, biased and incorrect information from various sources known for their enmity towards Iraq. Upon this he has based the well-known opinions contained in the reports submitted to the Human Rights Commission and the General Assembly and expounded at press conferences and lectures, and the overtly hostile attitudes which he betrays on every occasion. He appears to have spent all his time promoting the partition of Iraq and changing its system of government, by spreading tendentious rumours and propagating erroneous information which kindles ethnic and sectarian dissension and fragments the national unity of Iraq.

3. For that reason, Iraq, after its experience of working with the Special Rapporteur, and concerned for the success of the work of the Special Rapporteurs chosen by the Human Rights Commission, feels that they should be chosen from among people who are capable of objectivity, neutrality and impartiality, whose humanitarian credentials are established and who have no preconceived antagonism towards the country with which they will deal, which has not been the case with regard to Iraq.

B. Activities of the Special Rapporteur
(paras. 4-11 of the report)

4. The Special Rapporteur reiterates throughout his report that, in making his charges, he relied on "a great variety" of sources, but he does not name those sources. This again calls in question the authenticity of his charges and the competence of the Special Rapporteur in making such serious claims based on sources which are not specifically named.

5. In paragraph 6 of his report, he refers to the fact that he sent two Centre for Human Rights staff members to the Turkey-Iraq border. We believe that he sent them to the northern region, which lies outside our national jurisdiction, being controlled by armed groups supported and backed by the United States of America and certain other Western States. It must be said that the Special Rapporteur relied on one side only for his sources and on people legally judged to be outside the law because they have revolted against the legitimate central authority. How can the Special Rapporteur imagine that such witnesses are genuine and reliable?

6. He refers to the fact that he also relied for information on documents "released to the care of" Middle East Watch. This again calls in question his credibility and the authenticity of his information, since nothing is easier than to create forged documents or to alter documents and use them for a particular purpose.

II. ALLEGED HUMAN RIGHTS VIOLATIONS

A. Alleged violations affecting the population in general

1. Arbitrary executions and summary proceedings (paras. 19-25)

7. The Special Rapporteur deliberately ignores the effects of the difficult conditions experienced by Iraq ever since the 30-Power aggression against it, combined with the impact of the unjust and total sanctions which still continue to be imposed on Iraq. He insists on giving a very bad interpretation to many exceptional proceedings, which had to be carried out, his intention being to vilify Iraq and its judicial system. The Iraqi people is experiencing extremely difficult circumstances as a result of these inhumane sanctions, which directly affect Iraqi citizens, some of whom make use of these conditions to commit criminal acts intended to exploit their countrymen, threaten their security and damage their property. It was therefore necessary to take preventive measures to protect from harm people already hurt by these sanctions, to minimize their effects and to provide adequate supplies of foodstuffs to every citizen, taking them out of the hands of frauds and monopolists. Thus was the decision taken to execute some merchants who were putting at risk the food and lives of the people. The penalty was increased in order to combat any treachery which could damage the security of the State and the people.

8. Van der Stoel claims there are deficiencies in judicial proceedings with regard to those sentenced to death, which completely contradicts the reality as regards these proceedings. Iraq takes every possible care to comply with the principles of justice and law and respect for human rights in the light of legal practices, laws and regulations and international conventions concerned with these principles. For that reason, it strictly implements safeguards guaranteeing the rights of those facing the death penalty, as called for by Economic and Social Council resolution 1989/64 on 24 May 1989. The Constitution lays down the principles on which court proceedings are based, including the right of the accused to defend himself. Article 20 stipulates that "the right of defence is sacred at all stages of the investigation and trial, in accordance with the provisions of the law". The Code of Criminal Procedure provides for

the right of the accused to use a legal adviser of his choice, together with the facilities for preparing his defence. A person condemned to death also has the right to appeal against a sentence or verdict passed on him. The Code of Criminal Procedure provides for the right of the accused to appeal against a verdict passed on him: article 249 (a) stipulates that "the Attorney-General and the accused each have the right to submit an appeal to the Court of Cassation against judgements, decisions and measures issued by the misdemeanours court or the criminal court, if they were based on an infraction of the law or a mistake in its application or interpretation". Similarly, the legislator gave particular importance to sentences involving the death penalty, making the latter automatically subject to review by the Court of Cassation, the highest legal body in Iraq, whether requested by the person condemned to that punishment or not. Article 16 of the Act on the Office of the Attorney-General No. 159 of 1979 stipulates that the concluded cases in which the penalty of death or life imprisonment is imposable shall be directly referred by the criminal court to the Presidency of the Office of the Attorney-General. The law also provides for the scrutiny of criminal law suits carrying the death penalty by the full bench of the Court of Cassation, i.e., by every member of it. The purpose of this procedure is to guarantee the right of the person on whom such a sentence is passed and the integrity of the decisions resulting in these penalties from a legal point of view.

2. Enforced or involuntary disappearances (paras. 26-33)

9. The Government of Iraq has tried to deal seriously with whatever questions and requests for clarification have been raised by working groups and Special Rapporteurs and to answer them as far as possible with the information available. Some questions have already been dealt with, but it has not been possible to reply to others in the absence of documented information, especially in relation to the disappearance of some persons of whom there is still no trace. Indubitably, any country that went through a fierce war such as the one with Iran, involving eight years of military operations and all their attendant humanitarian and material disasters, would find it difficult to have a precise picture of everything concerning its citizens. This is particularly true in the regions which were the theatre of military operations or close to them, such as the border areas whose occupants have fled to areas they consider safe, or have been forced to leave by armed opposition elements. How can it be possible to locate individuals who are reported to have disappeared in the confrontation between government forces and armed elements during the riots which followed the military aggression against Iraq? After government forces had recaptured the areas which had been under the control of these elements, the inevitable happened, whether amongst citizens or the security forces or amongst these elements, of which large numbers fled from Iraq. As for van der Stoel's claim that disappearances were systematically carried out by the Iraqi Government, it is completely untrue and results from a lack of understanding of the realities in Iraq.

10. With regard to what are called disappeared Kuwaitis and third country nationals (para. 32), Iraq, driven by a humanitarian impulse, has spared no effort to bring this matter to a conclusion, and is presently cooperating seriously with the International Committee of the Red Cross (ICRC) in the search

for those missing, by going through individual files. It is also working positively with the suggestions from well-intentioned parties to participate in closing the files of those missing and to prevent their political exploitation. However, these initiatives have always met with rejection from the Kuwaiti side. It is known that 6,528 Kuwaitis and nationals of Arab and foreign third countries were released and handed over to the custody of ICRC and that 6,364 Kuwaitis were handed over to ICRC and returned to Kuwait. It is worth noting that there are 4,214 Kuwaitis presently in Iraq, registered with the ICRC delegation since 1991, who have expressed their desire to return to Kuwait but are still awaiting the agreement of the Kuwaiti authorities to their return. Up to 13 July 1994, only 707 individuals have been permitted to return.

11. With reference to van der Stoel's claim that there were cases of disappearances due to the expulsion of those of Iranian origin, it is absolutely untrue. Iraq practised its legitimate right to safeguard the security of its citizens and preserve its sovereignty and its territorial integrity after a series of crimes had been committed by those people, threatening the lives of innocent Iraqi citizens. Iraq returned those people safely to their native country (Iran), and no case of disappearance was reported during the operation to return them. If there were any such cases, they might have taken place after their return, their country of origin being responsible.

3. Torture and other cruel, inhuman or degrading treatment (paras. 34-38)

12. The Special Rapporteur refers to the fact that torture and inhuman treatment have become a phenomenon in Iraq. This is absolutely untrue, and conflicts with the legal reality, which provides for the protection of the individual under any form of arrest or detention. Iraq law severely punishes anyone who carries out torture during the detention and interrogation of suspects. Article 22 (m) of the Penal Code forbids torture, while articles 232 and 333 of the same Code punish the practice of torture, considering it in certain circumstances as a capital crime. The Code of Criminal Procedure insists that the right to freedom and human dignity be guaranteed. Article 332 provides for a period of imprisonment not to exceed one year to be imposed on any civil servant or any public employee who treats anyone with cruelty likely to damage his self-respect or honour or causes bodily pain. In addition, article 127 of the Code of Criminal Procedure states that the confession of a suspect obtained under psychological or physical duress has no legal validity. Indeed, a number of verdicts have been passed condemning and punishing the perpetrators of those crimes. For example, a police officer, two commissioners and five other ranks were sentenced to seven years' imprisonment (case No. 673/92); a police officer was sentenced to 10 years' imprisonment for carrying out torture during interrogation (case No. 116/J/994 Diyala); and three cases of this kind are at the decision stage, verdicts of the relevant courts still being awaited in respect of a commissioner and four associates (case No. 1178/91 Diyala), a police officer and two associates (case No. 1145/93) and an officer and two associates (case No. 655/93 Qadisiyah).

4. Arbitrary arrest and detention, and due process of law (paras. 39-46)

13. The Special Rapporteur expresses concern regarding the "large number" of persons who are reported to be arbitrarily detained throughout the country as a result of previous arbitrary arrests or maladministration of justice and refers to the responsibility of the armed forces, including the military, security and intelligence services, for arbitrary arrest and detention in Iraq.

14. We wish to state that this allegation is false and lacking in objectivity. In both factual and judicial terms, it ignores the real situation in Iraq. The provisions of the Iraqi Constitution, the Code of Criminal Procedure and the Penal Code clearly prohibit the arrest of persons without a warrant issued by a magistrate or a court. They also provide for the punishment of any civil servant or public employee who arrests, imprisons or detains a person in circumstances other than those covered by the law. Article 22 (b) of the Constitution states that no one may be arrested, detained, imprisoned or searched except under the provisions of the law. In conformity with this principle, article 93 of the Code of Criminal Procedure states that no one may be arrested or detained without a warrant issued by a judge or a court in the circumstances specified as permissible under the law. Article 322 of the Penal Code stipulates that any civil servant or public employee who arrests, imprisons or detains a person in circumstances other than those covered by the law shall be imprisoned for a period not exceeding seven years or shall be detained. In addition, article 94 (b) of the Code of Criminal Procedure states: "The wanted person shall be served with the warrant issued for his arrest and, following presentation thereof, shall appear before the originator of the warrant." In the event of the investigator exceeding his competence and arresting or detaining a person without an arrest warrant, the victim himself may file a complaint. The Office of the Attorney-General may also do so, in pursuance of its mandate and in the light of its responsibility for oversight of the investigation and of detention centres, inasmuch as it represents a neutral element in the criminal proceedings, in contrast with the system of the Public Prosecutor's Office, under which the latter carries out the investigation. In addition, under article 1 (a) of the Code of Criminal Procedure, anyone possessing information concerning the crime, including the relatives of anyone wrongfully arrested or detained, may take legal action and demand that the detainee be brought before the court and given a hearing so that in the event of arbitrary detention the perpetrators may be punished. This procedure represents the implementation of the principle of habeas corpus.

15. In pursuance of the Iraqi legislator's resolve to design machinery to guarantee the right to freedom and to protection against arbitrary arrest, the Ministry of Justice issued Directive No. 4 (1988), published in the Official Gazette on 11 July 1988, recommending that investigators should notify the examining magistrate of any information reaching them regarding the commission of a felony or a misdemeanour. In addition, it requires the Office of the Attorney-General to pay two supervisory visits to each police station and detention centre with a view to inspecting the detention centres to ensure that nobody has been detained without the issue of an arrest warrant by a competent judge or court. It must also make sure that the detention centre has proper

health conditions, listen to the complaints of the detainees and take legal action against any abuses that it detects.

16. Decision No. 1016 adopted by the Revolution Command Council on 1 August 1978, referred to by the Special Rapporteur in paragraph 45, stipulates that the prosecution of crimes pertaining to the national economy, trade, financial confidence in the State, bribery and embezzlement, as specified in the Penal Code, shall fall within the jurisdiction of the Revolutionary Court.

17. The Government of Iraq wishes to point out that this decision was adopted in 1987 and not 1978 as stated in the report and to explain the reason for its adoption. This country, or indeed any country, may be forced by exceptional circumstances to enact laws and decrees to protect society's basic interests from assault. The purpose of the above-mentioned decision of the Revolution Command Council, which was adopted during the Iran-Iraq war, was to protect the people's livelihood from fraudulent acts and from exploitation for narrow personal interests. We have already stated that the Revolutionary Court has been abolished and its areas of jurisdiction returned to the ordinary criminal courts.

18. The Special Rapporteur states that "the Iraqi Constitution does not ... contain any provisions concerning every person's right to a fair trial by a competent and independent tribunal".

19. We wish to state that the Special Rapporteur's assertion is untrue and inaccurate inasmuch as this principle is contained in a number of provisions of the Constitution which embody a self-evident concept based on the right of the individual to a fair trial. We refer to the constitutional provisions contained in article 20 (a), (b) and (c), article 21 (a) and (b) and article 22 (a), (b) and (c) and to article 63 (b) which states that the "right to litigation shall be guaranteed to all citizens".

20. The Special Rapporteur refers to Decision No. 1219 of the Revolution Command Council of 7 November 1984, which stipulates that government officials sentenced to imprisonment for embezzlement of State funds may not be released upon completion of their sentences unless the embezzled funds have been returned - thus imposing a life sentence on those unable to return the funds.

21. We wish to state that the crime of embezzlement is viewed as a crime that has a destructive impact on society, especially in States that depend on the planning of their economy. The criminal law authorities had been unable to deal with this crime, and it was unfair to sentence a embezzler of public funds to one or two years' imprisonment, leaving him to enjoy on release the fruits of his crime against society. Furthermore, an important result of the implementation of this decision has been a marked decline in the average rate of perpetration of such crimes, which is precisely what the legislator had in mind and has achieved.

5. Freedom of opinion, expression and association (paras. 47-54)

22. Unquestionably, fundamental and democratic freedoms are usually strengthened under normal circumstances and are spread by peace and security, a situation that has not prevailed in Iraq in recent times. In spite of the fact that Iraq initiated steps to strengthen such freedoms immediately after the end of the war with Iran, enacting the Political Parties Act and commencing consideration of a Freedom of the Press Bill, the aggression perpetrated against Iraq and the subsequent embargo led to the deferral of its promulgation pending the return of normal circumstances.

23. In paragraph 48, van der Stoel refers to the fact that Iraq is ruled by a single party, which is no surprise since the same is true of many States in the world. The Arab Baath Socialist Party led the 1968 revolution so that it was only natural for it to become the main party in Iraq and, in consequence, for its principles and ideas to be reflected in social and political life just as would happen in any other country. Van der Stoel's attempt to interpret that as a restriction on freedom of belief is unjustified and an expression of bad faith. Moreover, it disregards the existence of the political parties allied in the National Progressive Front coalition such as the Kurdistan Democratic Party and the Kurdistan Revolutionary Party.

24. The same paragraph refers to parties that have been prohibited, describing this as a violation of the right to freedom of expression and association. We wish to point out in this connection that the prohibited parties referred to are groups hostile to the interests of the Iraqi people and linked to foreign parties hostile to Iraq. Incited by these groups, their supporters have carried out terrorist operations against innocent citizens, necessitating action to protect the people from their criminal activities. On no account, therefore, may they be considered parties in the generally accepted sense of the term.

25. In paragraph 53 of his report, van der Stoel says that employees of the public sector do not have the right to join trade unions. It should be noted in this connection that a decision has already been taken to accord all public-sector employees the same privileges and rights as other employees with a view to ensuring equal rights, it being understood that this measure does not affect employees in the private sector and their enrolment in existing trade unions, which continue to operate normally.

6. Freedom of movement and residence (paras. 55-61)

26. The Special Rapporteur states that freedom of movement is restricted in Iraq, in particular the right to leave the country, and that reports received by him indicate that there has been a de facto ban on travel from the country by the population from the early 1980s up to the present.

27. This allegation is exaggerated and biased, and we feel ourselves compelled to recall what we have said, namely, that, since the early 1980s, Iraq has been experiencing exceptional circumstances. Anyone who follows the affairs of Iraq, must know that the Iran-Iraq war, which lasted eight years, forced the Government of Iraq, as a result of these exceptional circumstances, to impose

restrictions on tourist travel by Iraqi nationals. However, on 17 January 1990, the Decree on Permission to Travel was issued, but the restrictions were applied anew on 2 August 1990. On 15 May 1991, a new decree on permission for Iraqi nationals to travel was issued.

28. Reference is made by the Special Rapporteur in his report to the tax of 15,000 Iraqi dinars imposed on citizens travelling abroad, as well as Passport Act No. 84 of 1983, which imposes a penalty of imprisonment and confiscation of movable and immovable property, and also to article 1 (c) of the Act itself.

29. We should like to explain that the Special Rapporteur persistently overlooks the exceptional circumstances through which Iraq has been passing from the 1980s up to the present and, in particular, its suffering as a result of an unjust economic embargo, now in its fourth year, which has caused an acute scarcity of foodstuffs and medicine and resulted in the death of thousands of citizens. The Government of Iraq therefore resorted to imposing a tax on citizens' travel in order to reduce the squandering of hard currency in citizens' expenditures on tourism so that it might be used to purchase essential supplies and meet the basic needs of citizens.

30. With regard to Passport Act No. 84 of 1983 and article 1 (c) thereof, we should like to state that every citizen must respect the laws of his country, comply with them fully and refrain from contravening them. Anyone who contravenes them is subject to punishment or legal action. This is the prevailing rule applied in all State systems throughout the world, and its aim is to maintain order in the State. Illegal and illegitimate departure from or entry into a country by citizens indicates their contravention of the laws of the country, which renders them answerable before the law and causes the provisions of this article to apply.

31. The Special Rapporteur states, with regard to the freedom of women, that they require approval from their husbands in order to leave the country, while unmarried women are said to require the permission of their father or a brother, while unmarried women without a living father or brother are apparently not allowed to leave the country.

32. We should like to explain in this regard that Iraq is an Islamic country and that its Constitution and laws are derived from the principles of the Islamic Shariah and the Islamic religion, which guarantees women full enjoyment of their rights, subject to preservation of their honour. Accordingly, the Iraqi Constitution contains articles that give women the right to enjoy their rights. The requirement that a married woman should obtain the permission of her husband when leaving the country and the permission of her father or a brother if she is unmarried does not detract from her status or violate her rights so much as it is an expression of the respect that must prevail in married life and family life so as to ensure the protection of women and the safeguarding of their honour.

33. The Special Rapporteur states that students with a government scholarship are permitted to leave the country in order to pursue studies abroad with their family members serving as guarantors of their return, risking economic penalties should a relative not return.

34. The Government of Iraq always tried to develop the ability of outstanding students and sends them to pursue their studies abroad on training courses or on scholarships. That requires the payment of large amounts of hard currency to cover the cost of their studies. Applicants for study abroad sign a contract with the Government specifying what the State is to pay for the student and the concomitant obligations regarding government service following the completion of his studies. However, this procedure has been suspended because of the sanctions and because the State is unable at the present time to spend hard currency on students. Students still receive every encouragement and all kinds of assistance.

35. The Special Rapporteur refers to restrictions on freedom of movement inside the country and the existence of an extensive system of checkpoints throughout the country, in particular on the roads between large cities and in sensitive regions, and also to the harassment of citizens by the government officials guarding the checkpoints.

36. The Special Rapporteur's statement regarding freedom of movement inside the country and the existence of checkpoints throughout the country contains many falsehoods and is intended as an affront to Iraq. Anyone who follows the affairs of Iraq knows that, after the incidents that followed the Gulf War, the Government tried to preserve the security and stability of the country by establishing checkpoints in most regions of Iraq, not only in the northern and southern regions, for the purpose of protecting citizens and blocking the entry of infiltrators and fugitives from neighbouring States. The allegations that citizens are subjected to robbery, arrest and arbitrary attention at the checkpoints are totally untrue. The duty of checkpoint officials is to protect citizens and their property and not to rob or arrest them. With regard to the Special Rapporteur's statement that United Nations personnel from humanitarian agencies have been subjected to harassment by checkpoint officials, resulting in the obstruction of their work, that too is an allegation that is inaccurate and rife with falsehoods. The purpose of humanitarian relief operations is to provide foodstuffs and medical supplies to citizens throughout Iraq. It is impossible that checkpoint officials should obstruct the work of United Nations personnel engaged in meeting citizens' needs of the foodstuffs and medicine that are extremely scarce owing to the economic embargo imposed on the people of Iraq. United Nations personnel may have been subject to harassment while carrying out their duties in the northern region at the hands of Kurdish groups. It is, moreover, general knowledge that the northern region is outside the control of the central Government.

37. It should be noted that certain United Nations personnel, instead of directing their efforts at mitigating the suffering of the Iraqi people resulting from the embargo, have been committing offences that fall into the category of economic sabotage. They have been caught in the act, so that there can be no question of violations of immunity. These offences include the smuggling of antiquities, gold jewellery, drugs, carpets and rare works of art.

38. It is claimed that freedom to choose one's place of residence has been restricted in Iraq and that in the Governorates of Mosul and Kirkuk a policy of "Arabization" is applied, having begun in the 1980s. It is said that, as a consequence, Arabs who chose to live in these areas are granted privileges.

Allegations were also made regarding the Government's responsibility for the forced displacement of Iraqi citizens, including Kurdish and Shiah families, following the events of March 1991.

39. We should like to explain that Iraqi citizens enjoy freedom to choose their place of residence in any area of Iraq. There is no discrimination between Arabs and non-Arabs. All Iraqi citizens are equal before the law, in accordance with article 19 of the Constitution, without any discrimination based on national, religious or ideological affiliations. There are no restrictions on choice of place of residence in any of the governorates, including Kirkuk and Mosul. Property ownership there is not subject to restrictions based on national affiliation. However, there are organizational and administrative measures to regulate housing. With regard to the forced displacement of Kurdish and Shiah families after the events of March 1991, we reiterate our previous statement that, as is general knowledge, after the events of March 1991, the northern region has been outside the control of the central Government and that any acts of sabotage or displacements of Kurdish families are the responsibility of Kurdish groups. Moreover, the continuing battles between these groups and the instability of the security situation has prompted many Kurdish families to leave their homes and seek new ones in peaceful areas. With regard to the displacement of Shiah families and the displacement of the population of the Ahwaz, we would point out that the Government of Iraq has already responded to these allegations and has stated that the real reason behind the exodus of the population of the marsh region to other areas or to neighbouring States, including Iran, lies in the fact that certain neighbouring States and agents in the region are endeavouring to create a climate of insecurity and instability to use for the dissemination of tendentious rumours among the people, which cause some of them to leave their areas. Moreover, these agents also compel them by force to leave, for political purposes, as is well known to all. The events following the Gulf War demonstrate this clearly. In addition, there are the after-effects of the aggression against Iraq and the negative impact of the economic embargo imposed on Iraq, which is now in its fourth year and continues to this day. It has had a major impact on the economic and social life of citizens all over Iraq, particularly on the marsh Arabs, for whom living conditions are particularly harsh. In spite of the difficult economic circumstances through which the country is passing, we find that the Government of Iraq has striven in recent years to improve the living conditions of the marsh Arabs, inasmuch as it has offered them an opportunity to move voluntarily to nearby housing complexes where health and educational services are available to reduce the difficulty of their living conditions.

40. The Special Rapporteur mentions the occurrence of cases of expulsion from the country, since the early 1980s, of citizens of Iranian origin, alleging that they were forced to leave Iraq and have not been allowed to return.

41. We should like to state in this regard that, before the Iran-Iraq war, Iraq was home to large numbers of Iranians. Following the overthrow of the Shah's regime in Iran, these Iranians resident in Iraq began to cooperate with the new Iranian regime against Iraq, carrying out acts of terrorism against Iraqi officials - including assassination attempts - and against Iraqi institutions. With the outbreak of the Iran-Iraq war, the presence of these Iranians constituted a threat to Iraq and its safety because of their cooperation with

Iran, their engagement in terrorism and their diffusion of an atmosphere of instability and panic among citizens. To expel them at that time was a legitimate right such as is exercised by all States against those who commit acts of terrorism that prejudice the security and stability of the State and the safety of its citizens.

42. After the outbreak of the Iran-Iraq war, the interests of the defence, security and safety of the Iraqi State dictated that the rules of international law applicable in times of war should be put into implementation and that these foreigners should be deported from Iraq as holding Iranian nationality and belonging to Iran by affiliation and allegiance. It is not true that Iraq deported them because of their ethnic ties.

43. Iraq's action does not conflict with the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, article 5 of which provides that

> "Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected party is definitely suspected of or engaged in activities hostile to the security of the State, such individual persons shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.
>
> "Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention."

7. The right to nationality (paras. 62-65)

44. In paragraph 62, the Special Rapporteur states that the distinction between Iraqis of Ottoman origin and those of other origins, particularly Iranian, has been maintained through successive Governments.

45. We should like to make it clear in this connection that Iraqi Nationality Act No. 43 of 1963 does not take the principle of ethnic origin as a basis for the granting of Iraqi nationality. It merely provides, in article 3, that adults normally resident in Iraq and holding Ottoman nationality prior to the entry into force of the Treaty of Lausanne of 6 August 1924, which recognized the creation of the Iraqi State and the independence thereof, are divested of their Ottoman nationality and are regarded as Iraqis as from the above-mentioned date.

46. The Act also contains provisions relating to naturalization, whereby a foreigner may acquire Iraqi nationality, and some of them have done so. A segment of the foreigners living in Iraq have not applied for Iraqi nationality from Iraqi independence up to the present time, despite the issuance of numerous pieces of legislation to facilitate their acquisition of Iraqi nationality, preferring to retain their foreign nationality with a view to enjoying the

rights and privileges granted to Iraqis while avoiding the performance of the duties and obligations incumbent on them. Accordingly, they are subject to Iraqi law. Deportation operations are not carried out in respect of the various categories of Iraqis but only in respect of foreigners who have acquired Iraqi nationality by one of the naturalization processes provided for by law and who have been divested thereof pursuant to article 19 of Iraqi Nationality Act No. 43 of 1963, which is still in effect, because of the commission or the attempted commission of an act deemed to endanger the security or safety of the State. That is because nationality is an honour conferred on a foreign individual, and, should such individual commit an act deemed to endanger the security of the State that conferred this honour, he may be divested of that nationality as being unworthy of it. With regard to the allegations concerning acts committed against Iraqis and the reference to millions of persons living in constant fear of expulsion, we deny the existence of any organized expulsions of Iraqis. Those expelled were foreigners resident in Iraq, and they were expelled in accordance with the legislation in force, as set forth in the above-mentioned Nationality Act.

47. The Special Rapporteur refers to Revolution Command Council Decree No. 661 of 1980, which provides that non-Arab Iraqis shall not be entitled to Iraqi nationality unless they are loyal to the country and the supreme goals of the revolution, and states that citizens of Iranian origin (Shiah) were expelled in 1980 because they were presumed disloyal to the Government during the Iran-Iraq war, having had all their movable and immovable property confiscated without compensation.

48. It appears to us that the Special Rapporteur - assuming good faith - was the victim of dubious and inaccurate information and used it in the report without checking or proper processing. Otherwise, how could the Special Rapporteur imagine that the Revolution Command Council would except non-Arab Iraqis from the right to enjoy Iraqi nationality. There is a binding provision in the Constitution that states that the people of Iraq is formed of two principal nationalities, the Arab nationality and the Kurdish nationality. Moreover, the Decree in question relates to the matter of military service and provides that any Arab or foreigner who has acquired Iraqi nationality shall be exempt from compulsory military service and reserve service.

49. With regard to the expulsion of citizens of Iranian origin, we should like to state that, in the exceptional circumstances that prevailed in Iraq since the early 1980s and the outbreak of the Iran-Iraq war, many Iranians resident in Iraq began to cooperate with Iran and committed acts of terrorism against Iraqi officials and a series of offences directed against the lives of innocent Iraqi citizens and against Iraqi institutions and designed to spread an atmosphere of instability and panic among citizens. For this reason, it became the duty of the State, on the basis of the imperatives of the public interest in defence of the Iraqi State and its security and safety, to return these citizens of Iranian origin to their country of origin (Iran) by peaceful means. This is a legitimate right exercised by all States against anyone who engages in acts of terrorism prejudicial to the security and stability of the State and the safety of its citizens. Iran's actions were in accordance with the rules of international law followed in times of war.

50. With regard to the confiscation of the movable and immovable property of citizens without compensation, this allegation is totally untrue and contains considerable exaggeration. The procedures followed by the Government of Iraq prior to the expulsion of these Iranian citizens were safety measures designed to protect their property from loss or damage. The competent Iraqi authorities undertook to register all the property of citizens of Iranian origin who were made to leave and entered it in the documentary records still held by these authorities. Appropriate compensation was paid to all expelled citizens, and the Special Rapporteur's allegation that the Government put to use the personal property of the citizens is untrue.

51. The Special Rapporteur mentions recent cases of the expulsion of Faili Kurds and states that they were stripped of their Iraqi nationality and placed at the mercy of other Governments.

52. The Government of Iraq, while finding such far-fetched allegations and fabrications regrettable, would like to state that the Iraqi Constitution and the legislation in effect guarantee citizens their rights without any discrimination based on national, religious or ideological affiliation in that Iraqi citizens are all equal before the law. In no piece of Iraqi legislation are members of one community accorded preference over another, nor is there discrimination among communities (Constitution, article 19). Allegation of the Special Rapporteur that the Government expelled Faili Kurds is totally untrue and is intended as a gross insult to Iraq.

8. The right to property (paras. 66-71)

53. The Special Rapporteur makes allegations concerning the reports that he received on the Government's application of discriminatory measures in the purchase and sale of real estate in certain regions and its pursuit of a policy of populating certain areas of strategic or economic importance with communities loyal to its ideology and policies.

54. We wish to state in this regard that the Iraqi Constitution guarantees the right of all citizens to private property. Article 16 of the Constitution states that private ownership and individual economic freedom shall be ensured within the limits of the law and on condition that they are not invested in anything that conflicts with or harms general economic planning. It further states that private property shall not be expropriated, except where required for the public interest and with just compensation in accordance with the criteria laid down by the law. It shall be subject to legal guarantees ensuring just compensation.

55. The right to ownership of real estate is guaranteed for all citizens without distinction as to sex, religion, nationality or race. Regulations governing ownership exist in some big cities such as Baghdad owing to the demands of town planning.

56. Ownership by foreigners is permitted by law but is subject to the principle of reciprocity and is limited to a residence and a place of work.

57. The Special Rapporteur refers to the deportation in the early 1980s of large numbers of Shiites of Iranian origin and states that, after the events of 1991, Shiite cultural and religious property in southern Iraq was destroyed or confiscated by the Government.

58. We wish to point out that the Special Rapporteur makes repeated accusations and baseless allegations in a number of paragraphs with a view to inflating the matter, according it importance and drawing the attention of the international community to events that occurred some 14 years ago amid the exceptional circumstances prevailing in Iraq that we have already reviewed in the preceding paragraphs. At the same time, the Special Rapporteur deliberately and consistently ignores the tragic situation of the people of Iraq resulting from the unjust economic embargo, which is now in its fourth year. Moreover, everybody knows that the events that followed the Gulf War were attributable to terrorist acts perpetrated by outlaws and infiltrators using weapons and explosives supplied by neighbouring countries (Iran), which had been interfering, and continue to interfere, in Iraq's internal affairs with a view to stirring up trouble in the country and causing internal upheavals. Those elements attacked citizens, committed robbery and murder, and destroyed private and public property, including schools, centres of learning and places of worship.

59. We note the allegations made in reports received by the Special Rapporteur concerning the confiscation of property belonging to the Kurdish and Turkoman communities in government-controlled areas, a deportation campaign in and around Kirkuk and the summoning of Kurdish and Turkoman families to leave the city (para. 68), and his allegation to the effect that the inhabitants of the autonomous region are not entitled to own property in the Governorates of Ninawa, Ta'mim and Diyala in addition to their residences in the autonomous region, while Arab Iraqis living in the Governorate of Ta'mim enjoy that privilege (para. 71).

60. We wish to state that the Government of Iraq is surprised to note that the Special Rapporteur cites allegations that are inaccurate and contain many false accusations. For example, there is no legal provision in force in real estate record offices requiring a Turkoman Iraqi to sell his real estate to an Arab Iraqi, all Iraqis being subject to the same legal principles in real estate dealings. There are, however, administrative measures in force for the purpose of registering real estate in the name of the purchaser. In Baghdad, for example, Iraqis are not permitted ownership within the Governorate unless they were registered under the 1977 census in the Governorate of Baghdad, in accordance with Revolution Command Council Decree No. 1562 (1983). The aim is to halt increasing migration from rural areas and other Governorates to the capital, an undesirable phenomenon that afflicts many developing countries and requires planning and appropriate measures to check the flow. There are no restrictions on residence in the other Governorates, including Kirkuk, Mosul and Diyala, and property ownership there is not subject to restrictions based on ethnic affiliation. However, administrative measures exist to regulate housing.

61. With regard to the Special Rapporteur's reference to Revolution Command Council Decree No. 1610 (1982), which prohibits women married to non-Iraqis from

transferring ownership of their movable and immovable property to their non-Iraqi husbands.

62. We wish to make it clear that some Revolution Command Council decisions were adopted in exceptional circumstances during the Iran-Iraq war, to which we have already referred. There were reasons for each decision and special circumstances calling for its adoption. The Special Rapporteur has sought in a number of paragraphs to draw the attention of the international community to decisions and directives published more than 12 years ago in well-known circumstances in an attempt to distort the facts and to deny the legitimate right of a State that was forced by difficult circumstances to adopt decisions aimed at protecting the property of its citizens, in particular expelled persons of Iranian origin, against intruders. Decisions were taken at that time to place such property under the protection of the Government, as has already been made clear in the preceding paragraphs. This matter will be re-examined when circumstances improve and relations develop between the two States.

63. It should be noted that the political leadership in Iraq requests all ministries and government agencies to specify each year which decisions were taken under exceptional circumstances with a view to studying them and considering whether they should be revoked.

64. With regard to Iraqi women's right to ownership, we wish to make it clear that under Iraqi law women enjoy all rights of real estate ownership on an equal footing with men and enjoy full and independent legal personality, whether they are married or single.

9. Access to food and health care (paras. 72-79)

65. Although the Special Rapporteur has consistently referred to the deteriorating health and food situation of the people and to its suffering from lack of food and medicine, with concomitant increases in average morbidity and mortality rates, he none the less states in paragraph 72 of his report that "the ... reports and statistics ... clearly illustrate the unwillingness of the Government of Iraq to attend to its obligations with regard to the economic rights of the population".

66. In this connection, we wish to state that the Government of Iraq is well aware of its obligations under articles 11 and 12 of the International Covenant on Economic, Political and Social Rights to provide "adequate food, clothing and housing" and the highest attainable standard of physical and mental health. However, the well-known sufferings of the entire Iraqi people throughout the country have been and continue to be caused by the economic embargo imposed on them, which is now in its fourth year. It has created unnatural circumstances in Iraq, with inflation and difficult living and health conditions which have had an adverse impact on the life of citizens throughout the country.

67. The Government has drawn up a plan under which available essential medicines are supplied to hospitals for distribution free of charge to the sick. Medicines for the treatment of chronic illnesses are also distributed on presentation of a health booklet.

68. It should be noted in this connection that Iraq is a State that attaches special importance to the use of resources in such a way as to ensure a decent standard of living for its citizens, to the provision of health services and to heavy subsidization of the prices of basic foodstuffs.

69. The Special Rapporteur holds the Government of Iraq responsible for the present suffering of the Iraqi people as a result of the unjust economic sanctions imposed on them since August 1990, inasmuch as it can take the necessary steps to comply with the obligations required for the lifting of the sanctions, in particular by complying with Security Council resolutions 706 (1991) and 712 (1991).

70. We wish to state here, before turning to the question of Security Council resolutions 706 (1991) and 712 (1991), that the Government of Iraq has made and is making exceptional efforts at all levels to provide as much as it can in the way of essential needs, primarily food and medicine. The Special Rapporteur would do well to ask, before holding the Government of Iraq responsible for the suffering of the Iraqi people, how it has been possible for some 20 million Iraqis living in Iraq to go about their daily tasks in such an orderly, precise and productive way, both in Government and the various public sectors and agencies and in the private sector (workers, peasants, students, intellectuals, artists, low-income groups, tradespeople and all other groups). How can all of this take place without the phenomenal efforts expended to create the opportunities that ensure survival? The outstanding achievement represented by the rapid reconstruction of property destroyed by aggression was intended essentially to restore the life-sustaining installations and facilities that were the strategic target of the allied States. Agricultural and irrigation projects have been launched throughout Iraq to provide the largest possible supply of food. Factories are operating at capacity to produce all that domestic industry can supply in the way of subsistence goods. Schools, colleges and universities admit thousands of students to ensure that the educational process, culture, science and creativity are kept alive. And so life goes on in Iraq under an oppressive embargo unprecedented in modern history. Through this harmonious interaction with the work of the private sector, the leadership seeks to do all it can in a variety of ways to ensure survival. Iraqi resourcefulness has become a watchword recurring in all aspects of private and public life, from the simplest family in rural Iraq to the top echelons of the State. Everyone adapts resourcefully to the embargo so that life in Iraq can continue with as little risk as possible from the continued sanctions. It is precisely for this reason that harsh and inhibitory penalties are imposed on those who deliberately act in a way that disrupts life in Iraq, especially those who cheat the people of their food and medicine.

71. We shall now turn to Security Council resolutions 706 (1991) and 712 (1991) in order to reiterate our earlier assertion that they are political resolutions whose content is unrelated in terms of substance to the aims for which the Special Rapporteur believes they were adopted. The resolutions in question imposed political restrictions that violate the principle of the sovereignty of Iraq and its people over the country's wealth and natural resources, a principle enshrined in international law. They also violate the provisions of article 1, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights and of the identically worded article 1, paragraph 2, of the

International Covenant on Civil and Political Rights, which state that "all peoples may, for their own ends, freely dispose of their natural wealth and resources". It is odd that the Special Rapporteur insists on attributing such responsibility to Iraq at a time when international opinion is tending more and more towards an understanding of Iraq's position, now that it has complied fully with its obligations under resolution 687 (1991). It would have been more appropriate for the Special Rapporteur, in the interests of fairness and objectivity, to request the Security Council to comply with its obligations to lift all economic sanctions imposed on the people of Iraq, as required under that resolution. But Mr. van der Stoel reveals yet again that he is adopting the political stance demanded of him in order to prevent any serious attempt by the international community to press for the lifting of the economic sanctions.

72. The Special Rapporteur alleges in his report (para. 74) that the right to education, health care and other basic services is not fully guaranteed in Iraq inasmuch as enjoyment of that right depends on fulfilment by the population of a number of obligations such as military service. This allegation is a distortion of the facts. Education, health care and other basic services are provided by the State to all members of the population free of charge and without discrimination, restrictions or preconditions. Military service is a sacred duty imposed on every citizen, who has a national obligation to serve his country just as in the majority of States throughout the world. The allegation that access to public services is linked to citizens' compliance with the State's instructions is pure fantasy.

73. In paragraph 79 of his report, the Special Rapporteur refers to the provisions of the international covenants, in particular article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, according to which the State is obliged to take steps to the maximum of its available resources.

74. He also refers to paragraph 2 of the same article, which states that the States Parties "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion ...".

75. He further refers to articles 11 and 12 of the same Covenant concerning the obligation of the Government to recognize the right of everyone to an adequate standard of living and the highest attainable standard of physical and mental health.

76. In this connection, we wish to state that in spite of the existence of perverse international cooperation designed to prevent the Iraqi people from exercising its legitimate right to an adequate standard of living in the form of food and clothing, the Government in Iraq has done its utmost to provide every member of the Iraqi population with basic necessities, without discrimination as to colour, race, language or religion, in spite of the inhibiting circumstance of the continuing economic sanctions.

B. Alleged violations affecting ethnic and religious communities

1. Violations affecting the Kurds (paras. 98-125)

77. With regard to the section devoted by the Special Rapporteur to the situation of the Kurds in Iraq and the exaggerated allegations regarding gross violations of their human rights made in paragraph 98 of his report, the Government of Iraq wishes to state, before replying in detail to these allegations, that the Kurdish problem is basically a political rather than an ethnic one. It is an argument that has long been used to put pressure on all Governments that have held power in Iraq. We are not surprised that this question has been raised by the Special Rapporteur since he is known for his sympathies with the conspiratorial designs against Iraq and for his former association with the Coalition forces that led the aggression against Iraq. It became clear on studying the section on the Kurds in the Special Rapporteur's report that he repeats the same allegations in each report after blowing up the problem out of all proportion, thus revealing his bad faith and his role in sullying Iraq's reputation. It emerges from his report that he deliberately ignores the replies given by the Government of Iraq, basing his allegations and accusations on information supplied to him by States and groups hostile to Iraq. This gives rise to prejudiced views that he will not alter despite the facts presented by the Government of Iraq.

78. The Government of Iraq has already pointed out that the northern region has been controlled since 1991 by armed Kurdish militias, protected and supported by the Coalition forces stationed in the region. Besides the fact that this is a clear violation of Iraq's sovereignty, flagrant interference in its internal affairs and a gross violation of Article 2 (4) of the Charter of the United Nations, which requires all Members of the United Nations to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, it has given the elements in question the opportunity to perpetrate whatever crimes they please against the innocent inhabitants of the region. Many incidents have targeted government officials who were performing their regular duties in the service of the people of the region and have claimed numerous victims. The Iraqi Government was therefore compelled to withdraw its officials to protect their lives and ensure their safety.

79. With regard to the allegations concerning the imposition of a blockade on the northern region, we have pointed out on previous occasions that this allegation is inaccurate and contains deliberate fallacies that testify to the Special Rapporteur's ignorance of the real situation in the region. He states that the inhabitants of the northern governorates receive only 7 to 10 per cent of their basic food needs on ration cards. This actually confirms that the Government of Iraq sends the same rations to these governorates as to the other governorates of Iraq. However, it is unable to ensure that they reach their beneficiaries. The elements controlling the region receive the rations and dispose of them by theft or smuggling or by selling them to the citizens at double the price. These elements have acknowledged through their media that the manager of the branch of the State Enterprise for Trade in Foodstuffs in Dohuk Governorate, Sadiq Badi, who holds the office of deputy chief of the Security

Committee of the Parties, which controls the region, acting in conjunction with his brother Arif Badi, stole the rations sent by the Government to the Kurdish population and sold them at double the price in the local markets.

80. With regard to the blockade of other goods, we wish to point out that the northern region is in a state of chaos and instability, which has spread to Iraq's international frontiers, leaving them open to neighbouring countries, particularly Iran, and facilitating illicit traffic in all kinds of articles. The elements that control the region have dismantled entire factories to sell them in Iran. In addition, there have been numerous robberies of cars and various other articles and machines in different parts of Iraq. It has emerged from the investigation carried out by the competent Iraqi authorities that these articles are smuggled to Iran, where they are sold at exorbitant prices. For that reason and in order to ensure that Iraqi citizens in other parts of Iraq are not deprived of the subsistence goods that are now very scarce owing to the unjust embargo imposed on Iraq, the transport of these goods to the northern region has been regulated and placed under surveillance.

81. In paragraph 101 of his report, the Special Rapporteur alleges that the Government of Iraq has shelled farmland in the northern region, arresting farmers and preventing them from cultivating their fields. We wish to stress that these allegations are untrue and far removed from reality in both general and specific terms. We have already given an account of the characteristics of this region and its inhabitants on previous occasions and, despite the Special Rapporteur's conviction that there is no real presence of the Iraqi authorities in the region, he persists in holding the Iraqi Government responsible for the consequences of the incidents that occur there. There is no harm in explaining yet again the characteristics of the inhabitants of this region. They are a group of tribes who cultivate large tracts of land and who occasionally become involved in revenge feuds or disputes over agricultural land, cattle or water for irrigation. Sometimes these disputes erupt into internecine strife, which is usually resolved by means of customary tribal procedures without government intervention. Such incidents may occur in any country, in ordinary or exceptional circumstances, but using them to tarnish the reputation of States and Governments, as has been done in the case of Iraq, is unacceptable, and the aims and intentions underlying such allegations are clear and well known. We also wish to point out that the regions alleged by the Special Rapporteur to have been shelled by the Iraqi Government lie outside the control of the central authorities of the State, which therefore has difficulty in intervening as a mediator in the tribal disputes described above. In addition, the ideological disputes that break out between warring Kurdish militias, fuelled by certain foreign States, generally escalate into violent conflicts between members of the militias, as occurred in late 1993 and in May and the succeeding months of the current year, claiming hundreds of victims among the innocent Kurdish members of our population.

82. In paragraph 102 of his report, the Special Rapporteur holds the Government of Iraq responsible for security incidents and attacks on staff of the United Nations and of humanitarian organizations operating in the northern region, many of whom were killed or injured, causing the organizations to withdraw and suspend their assistance to the region. The Government of Iraq, while denying responsibility for these incidents in the region, wishes to draw the Special

Rapporteur's attention to the fact that the parties controlling the northern region are armed factions, which are in a continual state of conflict among themselves and are accustomed to take revenge on each other by a variety of means. Moreover, the general state of chaos in the region has laid it open to acts of sabotage by elements infiltrating from neighbouring countries, in particular Iran, for which the Iraqi Government is then held responsible in order to discredit it and tarnish its reputation.

83. In the same paragraph of his report, the Special Rapporteur alleges that an Iraqi military build-up along the internal frontier with the northern region has heightened the insecurity of the Kurdish inhabitants. This allegation is unfounded and merely adds to the slanders already circulated by the Special Rapporteur. There is no Iraqi military build-up in the region. We wish to draw the Special Rapporteur's attention in this connection to the fact that any independent State is entitled to move its military contingents anywhere within its borders as a basic expression of internal sovereignty, especially where there is a tangible threat to the security and safety of the citizens of a specific region that may spread to the rest of the country and particularly since the serious problems in the northern region have led to armed conflict.

84. The Special Rapporteur makes a surprising statement in paragraph 103 of the report concerning the development of the infrastructure (for example roads, public buildings, schools, cultural centres and economic support services) by the Kurdish local authorities. This goes to show that the Special Rapporteur is unaware of or deliberately disregards the suffering of ordinary citizens due to the theft and robbery of utilities that provide services and basic essentials. Even humanitarian relief consignments sent to the region by international organizations have not been delivered because of theft and robbery. The Special Rapporteur also refers to improvements in the enjoyment of civil and political rights. We for our part wonder how civil and political rights can be enjoyed in circumstances that can only be described as chaotic and dominated by foreign forces that fuel ideological disputes between the parties controlling the region, which results in armed conflict among them that claims the lives of innocent citizens.

85. The Special Rapporteur also refers in his report to humanitarian relief and the consultations on the United Nations Inter-Agency Humanitarian Programme at which the organizations and other government participants agreed on the need to concentrate more on rehabilitation over a longer period of time. In this regard, we wish to state that Iraq is a country well known for its potential and the sale of its resources. But the comprehensive economic sanctions imposed on it since 6 August 1990 have placed unjust restrictions on those resources and have presented its citizens from enjoying them. The restrictions have been maintained although the reasons for imposing them no longer exist. It would be more appropriate for the Special Rapporteur to work for the lifting of the sanctions imposed on Iraq instead of supporting them while assuming a humanitarian pose and calling for the continuation of the relief programme, which could be channelled to other regions.

86. The Special Rapporteur devotes a separate section to what he calls "the problem of landmines" in the northern region, accusing Iraq of failing to cooperate in mine clearance. The Government of Iraq wishes to point out that

the mines were laid solely with a view to protecting Iraqi military contingents during the war with Iran and were laid in regions of contact with Iranian contingents, especially on mountain slopes in the frontier regions. The Iranian contingents also laid minefields on the opposite side. In most cases, neither the Iraqi nor the Iranian mines remained stable in their original location. Environmental factors such as heavy rains swept them away to other areas, sometimes quite far from the site where they were laid. The mines are therefore difficult to locate.

87. The maps of the principal minefields were among the documents that were stolen or burnt when the northern region was taken over by the armed gangs and the States allied to them, and the withdrawal of the central authority from the region left the Iraqi authorities with insufficient opportunity to clear the mines.

88. The Government of Iraq, having taken note of the Special Rapporteur's allegations, finds that he has deliberately disregarded the risk from mines and unexploded devices left behind by the Coalition forces in both the northern and the southern regions during their aggression against Iraq. The dangers to which citizens are exposed from the explosion of these devices are not confined to the northern governorates, as claimed by the Special Rapporteur. He made no mention of the hundreds of incidents that occur on Iraq's southern frontiers with Saudi Arabia and Kuwait, where large numbers of mines and unexploded devices left behind by the allied forces claim the lives of innocent women and children.

The Anfal campaign (paras. 109-125)

89. The Special Rapporteur refers to what he calls the "Anfal campaign" in the northern region, providing details that call for comment inasmuch as he goes so far as to speak of "genocidal practices". He was obviously biased against Iraq and its Government, revealing his bad faith and his covert objective.

90. We wish to make the following clarifications in this connection. The Special Rapporteur based his accusations on documents provided by the organization Middle East Watch, which in turn obtained them from armed Kurdish gangs who claim that they seized them after the events of March 1991. It should be stressed that these documents, alleged by the Special Rapporteur to constitute clear incriminatory evidence against the Government of Iraq, were forged by the armed Kurdish elements with technical assistance from other parties hostile to Iraq and were surreptitiously placed with malicious intent among other ordinary and routine documents, giving the impression that they were genuine documents of State agencies that had been seized, especially since this type of forgery does not require complicated technical skills and can be achieved by simple operations.

91. The Special Rapporteur also relied on "voice recordings" of statements by Iraqi leaders. We are surprised that a responsible Special Rapporteur should rely on recordings that could have been made with consummate ease by any individual intent on incriminating a government official and that he should view the contents of the forged recordings as the systematic policy of the Government of Iraq.

92. The Special Rapporteur's allegation that the Anfal operations were directed against the Kurds in the northern region is absolutely unfounded. The measures in question were taken during the war with Iran by a State engaged in a protracted war and whose frontiers with Iran extend for 1,200 kilometres, so that the Iranian forces were able at the time to occupy cities, townships, villages and border posts in northern Iraq, including Halabjah, Banjwin and Hajj Umran. The military effort was therefore directed exclusively against border regions, where Iranian military penetration extended to isolated and barren territory lacking in basic necessities. Moreover, the Iranian regime has been seeking gradually over the years to implement pernicious plans in the northern region by encouraging large numbers of Iranian elements to settle in most Iraqi border areas, taking advantage of the rugged environment and the presence of its agents there as a result of the succession of insurrectionary incidents in the region dating back to over two decades ago. After those elements had been living in the eastern frontier regions of Iraq for a number of years, they gradually began to move further into the country and perpetrated acts of sabotage covering a wider area day by day until they managed, with the help of their agents, to reach areas in the Iraqi interior. The military operations were therefore directed essentially against hostile Iranian groups and elements allied to them in order to clear the territory under their control.

93. The Special Rapporteur repeats in every paragraph his allegation to the effect that Iraqi forces used chemical weapons against villages and towns in northern Iraq. In doing so, he has been taken in yet again by misleading information circulated by Iran and Kurdish elements working with it. It is true that the Iraqi forces used smoke bombs in the mountainous regions, a procedure not unusual in terrain similar to that of northern Iraq, to serve as markers for the shelling. This gave the ingenuous the impression that chemical weapons were involved, a situation exploited by Iran and its agents in the region to allege that Iraq was using chemical weapons.

94. The Special Rapporteur alleges that during these operations citizens were forcibly relocated, large numbers of villages were razed, the Kurdish rural way of life was destroyed and "tens of thousands" of men, women and children were arbitrarily arrested and disappeared.

95. The following is intended to provide a real and complete picture of the subject. The inhabitants of the regions of Iraq bordering on Iran were repeatedly attacked by Iranian forces. Their villages, homes and farms were subjected to constant Iranian aerial and artillery shelling in addition to direct military operations as a result of which many citizens were killed or wounded, while others fled and went missing and their property was destroyed. With a view to protecting those citizens, a border strip along the frontier with Iran from north to south was evacuated and residential complexes for the inhabitants of the regions in question were established in the vicinity of the governorates of Irbil and Sulaymaniyah with all modern conveniences from water and electricity to schools and hospitals. Owing to the difficulty of transferring them from their remote villages to the towns and complexes, the public authorities assisted them by providing transport to the nearest region with facilities for conveying families and their property to the complexes. The allegation regarding cases of disappearance during the relocation process is absolutely unfounded. It was circulated by Iran and the elements operating with

it in order to frighten the Kurdish members of our population so as to prevent them from taking advantage of this measure.

2. Violations affecting the Marsh Arabs (paras. 126-129)

96. In paragraph 126 of the report, in the section relating to alleged violations affecting the "Marsh Arabs", the Special Rapporteur claims that he has in his possession reports, films, photographs and official Iraqi documents which arouse concern with regard to violations practised against the Marsh Arabs. He claims that these items establish the responsibility of the Iraqi Government for these violations.

97. The Special Rapporteur treats these fabricated reports and information and forged documents supplied to him by countries hostile to Iraq as documented facts, actively propagating them. This proves his bad faith and involvement in the political campaign pursued against Iraq with the intention of stirring up confusion and discrediting Iraq's reputation.

98. The claims made in article 127 of arbitrary arrests and detentions made by the Iraqi Government are merely imprecise, exaggerated general allegations, which continue the heaping of groundless accusations on the Government of Iraq which the Special Rapporteur began in his previous reports. We have already made clear on previous occasions that the Iraqi Constitution prohibits the arrest, detention, imprisonment or search of any person except in accordance with the law and with a clear order issued by a judge or court as specified in article 22 (b). Article 322 of the Penal Code specifies a sentence of not more than seven years' imprisonment or detention for any employee or public servant who arrests, imprisons or detains someone under circumstances not provided for in the law.

99. The slanderous allegations of indiscriminate bombardment of civilian settlements in the marsh area, and that the area was previously subjected to attacks which increased after the 1991 "uprisings", particularly in the summer of 1992, demonstrate the extent of the political role ordained for the Special Rapporteur. He is fulfilling that role as it was planned for him, devoting his efforts to dividing Iraq. The Government of Iraq has already explained the nature of this area, which lies on the border with Iran. Iran has spared no effort to interfere with the internal affairs of Iraq, exploiting the difficult nature of the terrain. It has conscripted outlaw elements and supplied them with arms and explosives, with the aim of causing problems and threatening security and stability. The events which took place after the end of the aggression against Iraq in 1991 are the best proof of that. Those elements infiltrated the interior of Iraq through the marsh area extending across the border with Iran, and carried out rapes and mass slaughters of innocent civilians, burned and destroyed property, and ruined Government buildings and installations, frustrating the Iraqi authorities in their obligation to carry out their national duties and responsibilities and restore order, security and stability to the area.

100. The acts of sabotage supported by Iran are still being occasionally committed. Many banks have been attacked, and murders have been carried out, of

which the victims were members of police patrols and innocent civilians. Those Iranian-backed elements have also caused explosions and carried out robberies on the public highways. The last of these actions was the setting off of bombs at a group-wedding party in Dhi Qar Governorate in late April 1994, which claimed innocent women and children as victims.

101. In paragraph 128, the Special Rapporteur repeats his previous claims that the Government of Iraq had imposed an "internal" embargo on the marsh area, together with administrative requirements such as the possession of identity cards, which the inhabitants of the marshes are unable to obtain because of the nature of their life style. We would like to make clear that all Iraqi residents, men, women and children, are issued with personal identity cards without discrimination and that this has been provided for under the relevant Iraqi laws. The Special Rapporteur's allegation that the Iraqi Government has imposed an "internal" embargo is untrue, since all residents of Iraq, including those living in the marshes, benefit from the ration card system, everyone obtaining rations on the basis of the card and without discrimination. They also receive medicine, despite its scarcity, caused by the unjust sanctions, through hospitals which distribute medicine to patients at nominal prices, in accordance with the medical register. The Iraqi authorities are known to have invited all the humanitarian organizations, the international parliaments and the media to visit the area, and many of them have praised the system which provides citizens with their basic needs. The Special Rapporteur has repeated his previous charges relating to "drying of the marshes and damage to the environment". Here we would like to stress that the Iraqi Government has already made its position clear with regard to these claims, and the ulterior motive for them. Iraq is well aware of its obligations under the international agreements and laws which govern such activities. We find it surprising that van der Stoel should circulate such claims, denying Iraq its right to practise sovereignty over its own natural resources (article 1, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, and paragraph 1 of United Nations General Assembly resolution 1803 (XVII), adopted on 14 December 1962 and entitled "Permanent sovereignty over natural resources"). He also denies Iraq its right to development (article 1 of the Declaration on the Right to Development), and its obligation to ensure equality of opportunity for all in their access to basic resources, education, services and food (article 8 of the Declaration on the Right to Development). Iraq is careful to ensure that these projects are used to benefit the inhabitants of those regions, as stipulated in article 2, paragraph 3, of the Declaration on the Right to Development, which states: "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom". Similarly, the World Conference on Human Rights reaffirmed that right as "inalienable" in paragraph 10 of the Vienna Declaration.

102. The purpose of these projects is not to drain the marshes, destroy fish stocks and inflict great damage on the environment, as the Special Rapporteur and those behind him believe. The projects have nothing to do with the marshes except in so far as they may be better exploited to the advantage of the inhabitants of the area. Some of these projects have been being planned by

American and Western companies since 1954, with the aim of achieving a large number of economic, social and environmental benefits for the northern and central Iraqi governorates. Those benefits would include inter alia the full exploitation of agricultural land, the lowering of brackish groundwater levels, the restoration of soil fertility, which would raise its productivity, and the halting of desertification.

103. One of the principal aims of good land and water management is the improvement of river flows, reducing water wastage and reclaiming and cultivating land. These are the aims of the activities referred to above, which will have a positive effect on the environment of the area. The existence of large tracts of arable land will be a great agricultural resource for the people of the region. Those projects will also make it possible to provide essential services to the inhabitants and improve their economic, social and health conditions.

104. The campaign to which Iraq is being subjected is intended to disrupt and halt its general development, particularly in this region, in order to force it to remain underdeveloped, and to curb Iraq's efforts to find alternative sources of food and a decent livelihood for its citizens. This is necessary because of the unjust and total embargo imposed on Iraq, which has now entered its fourth year.

3. Violations affecting the Turkomans (paras. 138-141)

105. The Special Rapporteur devotes a complete section (paras. 138-141) to violations affecting the Turkomans in Iraq, and the restrictions to which they are subjected. We should like to make clear that these allegations, in common with others, contain many generalizations and are imprecise. The Iraqi Government is obliged by the Constitution to respect the freedom of thought, culture and religion of all sects and religions without differentiation. The rule specifying this is article 19 of the Iraqi Constitution, which stipulates that citizens are equal before the law without discrimination on grounds of race, origin, language, social category or religion. The Government has also taken positive steps to enable minorities to practise their rights without discrimination. The body of law and statutes issued by the State has dealt effectively with the matter of minorities while maintaining the integrity and security of Iraq. Article 5 of the Constitution guarantees the legitimate rights of all minorities, and on that basis the Turkomans, like any other minority, are employed in many Government posts in every sector and department and in many different places, without discrimination.

106. With reference to their language rights in the areas where they constitute a majority, Revolution Command Council Decree No. 89 of 24 November 1970 ruled that the Turkish language should be taught at the primary level and that all teaching materials in the Ministry of Education should be made available in Turkish. (For more information, see second Iraqi periodic report on economic, social and cultural rights (E/1990/7/Add.15), para. 48.)

107. The Special Rapporteur's claim that heads of cultural associations have been replaced by new heads who are members of the Arab Baath Socialist Party, is

mere fabrication, with the obvious political ulterior motive of stirring up sectarian strife. We may add here that the State has encouraged Turkoman writers and intellectuals to establish a union of their own and has made every effort to assist them and enable them to publish their works and develop their linguistic abilities. (See second Iraqi periodic report on economic, social and cultural rights (E/1990/7/Add.15), para. 10.) The State is, similarly, taking action to protect Turkoman clerics, as well as other, Muslim and non-Muslim, clerics without reference to their ethnic origins. It has made the Ministry of Awqaf and Religious Affairs responsible for the study and implementation of their requests, pursuant to the Religious Minorities Protection Act No. 32 of 1981, as is the practice in many Muslim countries.

108. The Special Rapporteur's report alleges that mosques and ancient properties have been destroyed in whole or in part. This is very imprecise. The State is merely undertaking a comprehensive programme of works to repair and restore a large number of properties and mosques in order to preserve and maintain them. These operations were not intended to damage Turkoman properties but simply came within the broad architectural programme which covered every area in the country.

109. It is alleged by the Special Rapporteur that social engineering projects are aimed at reducing the ethnic presence in historically Turkoman regions. This is an absurd suggestion. No attempts are being made to reduce the ethnic presence in Turkoman regions, nor have those groups been removed to other areas. They are, and always have been, free to choose their place of residence. Similarly, Arabs have no special incentives or rights distinguishing them from other citizens as far as their removal to the oil-rich Turkoman areas of Kirkuk and Mosul is concerned.

4. Violations affecting the Assyrians (paras. 93-97)

110. In paragraph 93 the Special Rapporteur refers to alleged violations affecting members of the Assyrian Community and restrictions on their cultural, linguistic and proprietary rights. The best way to refute those allegations is to list the material support provided to the Assyrian minority by the State:

(1) A plot of land measuring 2,000 square metres for the construction, in 1986, of the Eastern Church, for which the State, moreover, assumed the full costs of construction;

(2) Contribution of a plot of land in Ninawa measuring 4,000 square metres, for the construction of a church and the office of the Metropolitan;

(3) Contribution of a plot of land for the construction of a church and two residences for priests;

(4) Allocation to the Assyrians of an entire village in Sharafiyah, in addition to the building of a church having an area of 4,000 square metres;

(5) Grant of four plots of land in Baghdad, Kirkuk, Tall Afar and the Sumayl district in Dohuk Governorate;

(6) Contribution by the State of a plot of land and building materials for the construction of the Assyrian Community Club, intended specifically for that minority.

In addition, a number of clubs of the Assyrian, Chaldean and Syriac minorities have been established, such as:

(1) The Assyrian Community Club;

(2) The Assyrian Sports Club;

(3) The Al-Mashriq Club (Chaldean);

(4) The Al-Anwar Social Club (Syrian Orthodox), in the construction of which the State participated;

(5) The Armenian Club.

111. With regard to language rights, the State has permitted the teaching of the languages of some Christian minorities in suitable places, the only restriction being that they should not adversely affect national security, public order or health or violate morality.

112. Regarding the teaching of the Christian religion, there exists a clear, explicit decree allowing the teaching of the Christian religion in schools in which Christian students constitute 50 per cent of the total number. Here one can list, by way of example and without limitation, a number of schools in which the Christian religion is taught:

(1) Republic middle school for girls;

(2) Al-Mas'udi secondary school for boys;

(3) Al-Budur mixed school.

113. With regard to ownership, no restrictions whatsoever are imposed by the Government. The Government of Iraq has striven to comply with article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly of the United Nations on 25 November 1981 (resolution 36/55) through support for the publication of two magazines:

(1) Al-fikr al-masihi, in Mosul;

(2) Bayn al-nahrain, in Baghdad.

114. The Ministry of Awqaf continued its protection of religious minorities, including the Assyrians, pursuant to Statute No. 32 of 1981 concerning the protection of religious minorities. Special institutes and monasteries for

religious studies have been opened in Baghdad and Mosul for the training of priests and monks. Moreover, a large number of students have been sent to study in universities abroad and priests and monks have been sent to obtain higher degrees in theology, canon law and bible studies in European universities. Travel authorization has been granted to heads of religious minorities and priests to attend international meetings and conferences and to lecture in foreign universities. Furthermore, the State has supported the importation of the Scriptures and the Gospels into Iraq.

115. It should be pointed out that the Special Rapporteur's approach lacks objectivity, inasmuch as he makes considerable use of expressions such as "it is said" and "it has been alleged", which shows that his assertions are incorrect, for he did not base them on any documentary evidence.

116. In paragraph 95, the Special Rapporteur states that the Academy of the Syriac Language, established by Revolution Command Council Decree No. 440 of 25 June 1972, was subsequently abolished. We should like to point out that the Academy of the Syriac Language was not abolished, but was incorporated into the Iraqi Academy of Science as one of its divisions. Furthermore, Revolution Command Council decree No. 251 of 1972 accorded cultural rights to the Assyrian and Chaldean Syriac-speaking minorities and the State has not practised any discrimination or strict government control, as alleged by the Special Rapporteur. The said decree has been applied in fact, in accordance with the following principles:

(1) Syriac is the language of instruction in all primary schools in which the majority of the pupils are Syriac-speaking, the teaching of Syriac being compulsory in those schools;

(2) Syriac is taught in middle schools in which the majority of the pupils are Syriac-speaking;

(3) Syriac is taught as an ancient language in the faculty of arts;

(4) Special programmes in Syriac are broadcast on Kirkuk radio and television.

117. The allegation that the Assyrians were subjected in 1981 to a government policy requiring all schools to provide instruction in the Qur'an as part of a programme to promote national identity and allegiance is untrue and is intended to harm Iraq, for the Government has committed itself constitutionally to respect for freedom of thought, conscience and religion for persons of all religions and sects without discrimination, in keeping with the provisions of article 18 of the International Covenant on Civil and Political Rights. This allegation is refuted by the fact that the State permits the teaching of the Christian religion in government schools, as mentioned above.

118. The Special Rapporteur mentions, in paragraph 95, that many Assyrian churches were destroyed together with entire villages during the "Anfal campaign".

119. We wish to point out in this connection that the destruction suffered by a number of churches was a result of the Iran-Iraq war. Christians were relocated, along with other Iraqi citizens, from areas inhabited by them in villages situated in the border strip adjacent to Iran within the context of the evacuation of that strip from north to south to ensure the safety of Iraqi nationals. They were relocated to other villages set up specifically for them as residential complexes and new churches were built for them in the new areas to replace those they had left behind. This can be confirmed by reliable representatives of the Christian minorities in Iraq.

120. As to the accusations of the Special Rapporteur contained in paragraph 96, concerning persecution of the Assyrians by the Iraqi authorities and the arrest of some of their leading figures, it appears that the Special Rapporteur has relied on allegations circulated by hostile elements; moreover, he does not adduce any proof or list of names of such persons, despite the fact that they are said to be leading figures.

121. The Special Rapporteur's allegation in paragraph 97 that 900 Assyrian teachers in Ninawa Governorate were "pensioned off" in 1993 is quite astonishing, for the Assyrian teachers in Ninawa Governorate do not total that number, which is therefore exaggerated. Indeed, the Special Rapporteur would do well to present a list of names of teachers "pensioned off". Furthermore, absolutely no Assyrian students have been expelled from universities.

5. Violations affecting the Shiah (paras. 130-137)

122. The Special Rapporteur states in paragraph 131 of his report that a number of Shiah mosques and places of worship in Iraq have been destroyed and that the Iraqi Government refuses to rebuild most of them and encourages investors to use the land formerly occupied by those structures to build commercial centres.

123. In this connection, we should like to point out that during the aggression against Iraq, hostile planes bombed a large number of religious places, including mosques and churches, in various parts of the country. The aggression was followed by a period of unrest that was marked by looting and destruction of religious places. The Ministry of Awqaf has statistics and photographs documenting the extent of the damage. The Iraqi authorities concerned have made great efforts to restore and repair the ruined places of worship, especially in the Najaf and Karbala Governorates. As for the question of rebuilding a number of Husseiniyas and mosques, it is a known fact that such matters are always left to citizens who are able to undertake them with whatever financial and material assistance may be provided by the State to facilitate and encourage such charitable works.

124. The Special Rapporteur's allegation, in paragraph 132, that 105 religious scholars have disappeared and a number of students have been arrested, ill-treated and tortured is entirely unfounded and untrue. We should like to remind the Special Rapporteur once again that, as is known, during the disturbances that occurred after the Gulf War, a number of religious scholars met with violent death at the hands of rioters, while others fled to Iran, Saudi Arabia and other countries.

125. The Special Rapporteur alleges that the Iraqi Government prohibited burial ceremonies for the Ayatollah Sabzevari, is interfering in the selection process for the spiritual leadership of the Shiah community (the Marja'iyya) in Najaf and has prohibited the Ashura mourning ceremonies (paras. 133-134).

126. Those paragraphs, too, are groundless, for the exercise of religious rites is guaranteed for all religions and sects under Iraqi law. Indeed, the first and tenth days of the month of Muharram are considered official holidays and television and radio stations suspend their regular programmes on the tenth day of Muharram every year and broadcast religious programmes for the occasion. Furthermore, the State in no way interferes in the organization of the election of the Shiite religious leadership, a process that is left to the sect.

127. The Special Rapporteur refers in his report (paras. 130, 136 and 137) to intolerance and discrimination against Shiite minority groups such as Faili Kurds and Turkomans and internal deportation of some of them away from the areas inhabited by them.

128. This allegation is baseless and unsubstantiated, and no list of the names of the persons concerned is provided. We wish to emphasize that there is no discrimination against any religious minority: freedom of thought and belief exist in Iraq and religious rites are performed in complete freedom. The entire Iraqi people, with all its religions, denominations and ethnic differences, is combined in one nation, as stated in article 19 of the Constitution, which specifies that citizens are equal before the law, without any distinction based on sex, race, language, origin or religion. The reference of the Special Rapporteur to sectarianism in Iraq in the form of persecution of the Shiah is part of the hostile political campaign against Iraq being conducted by the United States and its allies, who use the issue of human rights violations in Iraq to sow discord within the single religion that embraces Arabs, Kurds and Turkomans.

III. CONCLUSIONS AND RECOMMENDATIONS (paras. 159-184)

A. Conclusions as to causes

129. In addition to the content of his previous reports, the report submitted by the Special Rapporteur to the fiftieth session of the Commission on Human Rights encompasses political and legal issues concerning the structure of power in Iraq and the role of its institutions. That aspect is discussed in two places; first, under the heading of "The rights pertaining to democratic governance" (paras. 80-86), and second, under "Conclusions" (paras. 159-184).

130. In discussing that aspect, the Special Rapporteur manifestly assumes the role of a political writer and analyst at the expense of his essential function as a special rapporteur on human rights in Iraq and disregards the content of United Nations General Assembly resolution 47/131, which stresses that the promotion, protection and "full" realization of all human rights and fundamental freedoms as legitimate concerns of the world community should be guided by the principles of non-selectivity, impartiality and objectivity, and should not be used for political ends. The General Assembly requested all human rights bodies

within the United Nations system, as well as the special rapporteurs, to take duly into account the content of that resolution in carrying out their mandates.

131. The political aspect apart, the remainder of the report simply reiterates the allegations frequently made in the earlier reports of the Special Rapporteur, thus affirming that the only new information he has comes from old dossiers which he receives on the odd occasion or whenever the circumstances of the anti-Iraq campaign so dictate, consisting mostly of unsubstantiated allegations that are elevated to the status of conclusive proof.

132. In discussing the politico-legal aspect of the structure of the Iraqi State and its institutions, the Special Rapporteur focuses on the Revolution Command Council, the National Assembly, the President of the Republic, the Council of Ministers and the Judiciary, relying - as he himself indicates - on a study, compiled in October 1993 by the International Commission of Jurists, entitled "Iraq and the Rule of Law". Lacking objectivity and documentation, that study proceeds from a position which is utterly hostile from the outset and on which the Special Rapporteur also bases himself. The Government of Iraq responded to the study and notified the International Commission of Jurists at the time.

133. In paragraphs 162 to 167, the Special Rapporteur discusses the composition of the Revolution Command Council, the powers vested in it, its role in public life and the mechanism of its work. His conclusion was that the Revolution Command Council "exercises absolute power independently of the people on the pretext that it is the 'true representative of the will of the Iraqi people'". We believe it is worthwhile mentioning here that article 37 of the Constitution confers on the Revolution Command Council the status of the supreme body of the State, as well as the authority to legislate, because since the revolution of 17 July 1968, it has assumed responsibility for the fulfilment of the popular will by wresting power from the reactionary regime and restoring it to the people; legislative powers were vested in the Revolution Command Council only for as long as necessary for the social and institutional revival of the State with a view to preparing the objective conditions for the exercise of the democratic form of governance chosen by the people in the light of its particular features and its social and national composition. However, no sooner had political, economic and social development matured to a degree that would usher in the start of a new political and constitutional stage than the Iran-Iraq war broke out.

134. The war ended and the study and development of the political and constitutional systems entered a new stage with the revocation of various emergency decrees and measures introduced owing to the state of war. Barely had that stage commenced than the Coalition States launched their aggression against Iraq, starting with the imposition of the economic embargo and followed by the military attack. They then exploited the events in Kuwait to destroy the country's various development infrastructures and to intervene subsequently in its internal affairs by imposing no-fly zones in the north and south of Iraq. Given the combination of all those circumstances, Iraq was once again obliged to adopt decrees and measures to counter the exceptional situation. Under the circumstances mentioned, the emergency measures were an essential factor in influencing the progress made towards constructing the country's democratic and constitutional path. In that respect, we should like to refer to the extensive

discussions on Iraq's new draft Constitution, which was to have been submitted to referendum in November 1990. The draft Constitution encompasses a substantial change in the political and constitutional structuring of the exercise of power founded on a broad extension of the democratic base.

135. The Political Parties Act of 1991 was also promulgated. In all instances, the powers of the Revolution Command Council are based on and derived from the Constitution and shall continue to be so until the full constitutional structure is achieved with the cessation of the exceptional circumstances that certain Western States, primarily the United States of America, impose on Iraq for political considerations whose motivation is clear and which are certainly no secret to the Special Rapporteur. It is worth pointing out here that no provision is made for the Revolution Command Council in the new draft Constitution, which instead creates a consultative assembly in addition to the National Assembly. It also establishes the principle of the election of the President of the Republic by direct secret public ballot.

136. In paragraphs 83 and 84 of the report, the Special Rapporteur centres his criticisms on the National Assembly in that participation therein is limited by virtue of the constraints laid down by the National Assembly Act regarding the conditions of candidacy for membership, the nature of its composition and the Higher Elections Commission. In that connection, we should like to state that the condition of restricting candidacy to Iraqis born of parents who are Iraqi by birth and of non-foreign origin is a condition applied by numerous parliaments throughout the world, particularly in countries that use the criterion of nationality law rather than citizenship law to bestow citizenship on individuals. Moreover, that particular condition concerns candidates for membership of the Assembly and not voters. The condition related to belief in the principles and objectives of 17 to 30 July 1968 and participation in Iraq's defensive war effort against Iran is aimed at loyalty to the country, defence of the unity of Iraq's territory and people and the safeguarding of its territorial integrity.

137. Concerning the statement that the Higher Elections Commission is presided over by a member of the Revolution Command Council, sitting together with the Minister of Local Government, the Minister of Justice, a representative of the Arab Baath Socialist Party and a representative of all parties taking part in elections, that composition is intended to achieve a strong and effective safeguard of the freedom and impartiality of elections. Thus far, elections have been held with complete success on three occasions, namely, in 1980, 1984 and 1989, under the supervision of magistrates in the polling-stations and in the presence of the media. However, in the light of the promulgation of the Political Parties Act and the expected adoption of the new Constitution once the emergency situation no longer obtains, particularly after the lifting of the embargo imposed on Iraq and the return to normal circumstances in northern Iraq following the withdrawal of foreign troops therefrom, it is highly likely that elections to the National Assembly will be held that take into account the imperatives of party pluralism.

138. In paragraphs 168 to 170 of the report, the Special Rapporteur discusses the office of the President of the Republic with regard to his enjoyment of extensive and all-embracing powers by virtue of which he is the de facto ruler

of the country. In that respect, we wish to state that the Iraqi Constitution (arts. 57 and 58) clearly defines the functions and powers of the President of the Republic. It is well known that Iraq has a presidential system, the like of which is constitutionally recognized and found in various countries world wide. On another note, most of the authorities vested in the President of the Republic under the Constitution are stipulated in the constitutions of most countries, including some Western States. Furthermore, the President of the Republic is answerable to the Revolution Command Council, which has the authority to dismiss him.

139. In paragraphs 171 and 172, the Special Rapporteur discusses the Council of Ministers, pointing out that its actual power is extremely limited since the President of the Republic exercises the real authority. As already stated in the preceding paragraph, the constitutional system in Iraq is presidential, and under article 61 of the Constitution the President of the Republic presides over the Council of Ministers. The creation of the Council of Ministers in 1991 forms the prelude to extending the authority of the Council of Ministers in line with the new draft Constitution and the Political Parties Act.

140. In paragraph 175, the Special Rapporteur discusses the politico-legal structure of the State and concludes that the Revolution Command Council not only controls legislation and its implementation but also has the power to interfere with the administration of justice; that it can bypass the official judicial system by establishing special courts; and that the independence of the judicial power is therefore only theoretical, which in turn means that there are no legal safeguards available for citizens. In that domain, we wish to re-emphasize that article 63 (a) of the Constitution stipulates that the judiciary is independent and has no power to change the law. The basic principles of the Constitution concerning the judiciary are similarly clear and unambiguous. The Special Rapporteur is pursuing roundabout methods to prejudice the power and independence of the judiciary by what he calls "the interference of the Revolution Command Council in the administration of justice" by obstructing the work of courts or changing their judgements. These allegations resemble the other falsehoods repeatedly stated by the Special Rapporteur, whether appropriate or not. If any material evidence existed, he would have been quick to indicate as much instead of contenting himself with such overstated generalizations. If the Special Rapporteur means that the promulgation by the Revolution Command Council of decrees that have the force of law constitutes intervention in the course of justice, such constitutional powers are vested in it and the character of such intervention is not executive but legislative, on the strength of article 42 (a); many countries resort to the same form of legislative intervention in cases where the National Assembly is not in session, as well as in exceptional cases.

141. Concerning the reference by the Special Rapporteur to the fact that the Revolution Command Council bypasses the official judicial system by establishing special courts, we wish to make it clear that Iraq's court system is essentially based on the normal court system. In conjunction with that system, however, a type of court specializing in specific and particularly serious social crimes operates exceptionally because of the situation in the country since the Iran-Iraq war and the aggression of the Coalition States against Iraq. However, the safeguards provided under the Code of Criminal Procedure obtain in regard to the

proceedings of such courts. The emergency courts are therefore removed whenever the political situation in the country is stable, as in fact occurred after the end of the Iran-Iraq war, when several emergency decrees were revoked, although the country was obliged to put several of them into effect again following the aggression of the Coalition States and the situation created by the economic embargo against Iraq.

B. Conclusions as to responsibilities

1. State responsibility (paras. 185-186)

142. Mr. van der Stoel holds the Government of Iraq responsible for the deliberate violation of human rights through what he calls a breach of the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, and the 1948 Genocide Convention. In that respect, we state that we are accustomed to Mr. van der Stoel's formation of judgements based on lies and misleading press information, as well as on information from undocumented sources and hostile parties, and to his ill-intended exaggeration whereby he perceives isolated cases which may sometimes occur as being general and systematic. He thus has no right to launch such serious charges or to lay down judgement himself without being aware of the nature of his action. This places his credibility under suspicion and consequently reflects on the credibility of the Commission on Human Rights itself.

2. Individual responsibility (paras. 187-189)

143. In a manner unprecedented, Mr. van der Stoel places individual responsibility on the political leadership in Iraq for, according to his allegations, deliberate violations of human rights, which is an obvious transgression of the function entrusted to him by the Commission on Human Rights. With that accusation, Mr. van der Stoel is openly performing his required role aimed at unsettling the legitimate political regime in Iraq in a bid to change it and at preparing the climate for blatant intervention in its internal affairs to the extent that any incident which might occur is imputed to the Government of Iraq as an intentional and organized act. We categorically refute that accusation, representing as it does unwarranted interference in the internal affairs of Iraq, the motives for which are obvious.